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And Vi Healthcare Finance, Inc.

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

In re:

SOUTHERN INYO
HEALTHCARE DISTRICT,

Debtor.

Case No. 16-10015-A-9

Chapter 9

DC NO.: KDG-4

Date: November 14, 2018
Time: 1:30 p.m.
Place: United States Bankruptcy Court
2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

Judge: Honorable Fredrick E. Clement

**MOTION TO DISQUALIFY ASHLEY M. MCDOW AND
FOLEY & LARDNER AS ATTORNEYS FOR THE DEBTOR**

**TO THE HONORABLE FREDRICK E. CLEMENT, UNITED STATES BANKRUPTCY
JUDGE:**

The *Motion to Disqualify Ashley M. McDow and Foley & Lardner as Attorneys for the Debtor* filed by HealthCare Conglomerate Associates, LLC ("HCCA") and Vi Healthcare Finance, Inc. ("Vi Healthcare") (the "Motion") represents as follows:

1 Southern Inyo Healthcare District (the “Debtor”) filed a Voluntary Petition under Chapter
2 9, Case No. 16-10015-A-9 on January 4, 2016.

3 This Motion is brought pursuant to California Rules of Professional Conduct Rule 3-310,
4 Local Bankruptcy Rule (“LBR”) 1001-1(c) and Rule 180 of the Local Rules of Practice for the
5 United States District Court for the Eastern District of California and applicable case law.

6 The Motion seeks an order of the Court disqualifying Ashley M. McDow and the Foley &
7 Lardner law firm (“Foley”) as attorneys for the Southern Inyo Healthcare District (the “Debtor”)
8 in the above-captioned Chapter 9 bankruptcy case.

9 The Motion is based on the grounds that the Foley and Ashley McDow have a
10 disqualifying conflict of interest because from 2009 through at least September 29, 2017, Ms.
11 McDow’s former firm, Baker Hostetler (“Baker”) represented HCCA, Vi Healthcare, Medflow,
12 P.C., and Dr. Benzeevi (the “Benzeevi Group”) in multiple matters including the drafting and
13 implementation of the Management Services Agreement (the “Inyo MSA”), which rejected by
14 Debtor in this proceeding. Ms. McDow was personally and directly involved in the drafting and
15 negotiation of the Inyo MSA for HCCA, especially with respect to the provisions in that
16 agreement relating to Inyo’s then contemplated Chapter 9 filing. Baker and Ms. McDow
17 represented both the Benzeevi Group and Inyo following execution of the Inyo MSA.

18 When the conflict developed between Debtor and the Benzeevi Group, Baker employed
19 the forbidden “hot potato” strategy, dropping the Benzeevi Group, and two weeks later
20 represented Debtor in making an emergency motion to terminate the Inyo MSA. Ms. McDow
21 personally offered a declaration supporting Inyo’s emergency motion to terminate and appeared
22 personally at the hearing seeking an immediate termination of the very Inyo MSA she had
23 previously drafted and negotiated for HCCA. These actions flew in the face of Baker and Ms.
24 McDow’s continuing fiduciary duties to their former clients. These fiduciary duties followed Ms.
25 McDow when she and another attorney from Baker, Fahim Fahrivar, joined Foley and continued
26 to be lead insolvency counsel to Inyo which continues to take positions adverse to the HCCA and
27 Vi Healthcare in these proceedings. These conflicts are now in the forefront as allegations of
28 malpractice by Ms. McDow and Baker have been raised and a global mediation is being proposed

1 in which Baker, Ms. McDow, HCCA, and Vi Healthcare, and the Debtor, each with differing
2 interests will participate as parties. Ms. McDow's conflict of interest between her current client
3 Inyo and former clients is imputed to the Foley firm who also must be disqualified. Allowing
4 Ms. McDow and Foley to continue to represent Debtor in the face of these egregious and flagrant
5 conflicts of interest flies in the face of the paramount concern of the courts "to preserve public
6 trust in the scrupulous administration of justice and the integrity of the bar." *People ex rel. Dept.*
7 *of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1145.

8 The Motion will be based on this Motion, the Notice of Hearing, the Declarations of Yorai
9 Benzeevi, M.D. and Hagop T. Bedoyan, the Expert Declaration of Robert L. Kehr, the Request
10 for Judicial Notice, the Memorandum of Points and Authorities, as well as any other documentary
11 or oral evidence presented in reply or at the hearing on the Motion.

12 WHEREFORE, HCCA and Vi Healthcare moves the Court for an order:

- 13 1. Granting HCCA's and Vi Healthcare's *Motion to Disqualify Ashley M. McDow and*
14 *Foley & Lardner as Attorneys for the Debtor,*
- 15 2. Disqualifying Ashley M. McDow and the Foley & Lardner law firm as attorneys for
16 Debtor, and
- 17 3. Granting HCCA and Vi Healthcare such other and further relief as is just and proper.

18 Dated: October 15, 2018

KLEIN, DENATALE, GOLDNER, COOPER,
ROSENLIB & KIMBALL LLP



By: /s/ Hagop T. Bedoyan

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